Schenck v. United States: A clear and present revisit

Rather than rehash the difference in democratic principles between the founding fathers and those of the democratic party today, I would like to begin this article by referring you to my previous article on the subject. It is a long-winded way of saying that when I refer to Marxist democrats, I am referring to the democrats today rather than the Locke democrats of our history. This seems, to my mind, the best way to preface this article. Certainly I do not mean to imply that all democrats are Marxists. The article, however, explains itself.

I preface it in this fashion because I find Schenck v. United States 249 U.S. 47 (1919) an interesting First Amendment case in light of what is happening today. It is important for more than just the fact that it coined two phrases.

In this case, Oliver Wendell Holmes wrote,

> *"The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force."*

In paragraph 5 he writes further,

> *"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."*

This is the coining of the phrases, "You can't yell fire in a crowded theater" and "clear and present danger."

That begs the question of what is a “clear and present danger?” John McCain and 92 of his cohorts seem to feel that they have answered that question with the passage of S. 1867 and the infamous Section 1301 of the National Defense Authorization Act. Diane Feinstein even wrote an amendment to ensure that there was a provision in this section that it did not apply to American citizens. She voted on it even though her amendment failed. The gist of this, as you may have read, is that the military now has the authority to round up “dissidents” and place them in Gitmo and other foreign prisons to silence them.

Apparently our own gulags are too full of those damn pot smokers!

So what constitutes a “clear and present danger?” Is it the gal with the peace sticker on her car? Certainly a person with a pocket Constitution and a Ron Paul sticker is suspect. Are you “supporting terror” and “not supporting our troops” or aiding the enemy if you speak out against the war? I suppose that you can add me to that list because I speak out against the war precisely because I support the troops. I object to dumping a trillion dollars into a war which killed and dismembered thousands of our dedicated young people with no clear objective to achieve. It is the same process we used on our Vietnam veterans who served their country and returned to be spat upon and to be told that they are really not sick.

Even Discover Magazine used space—best served to teach us the grandeur of evolutionary science—to comment on the horrors of S. 1867. Salon is one of the few that are using the Marxists clarion call of, “It’s not that bad.” You may find the opposing view there.

What is interesting is that the case concerns ***Comrade*** Schenck—the general secretary of the Socialist Party—who was convicted on three counts of conspiracy. He was distributing pamphlets to drafted men to avoid the draft and stay out of

World War I. I suppose, now, we know where the Marxist of the sixties got the idea to “burn their draft cards.”

Now those Marxists form the core of the usurped “Democratic Party” and the Southern Poverty Law Center. They are now using this “clear and present danger” theory to attack anyone who mentions the Constitution and that they have rights under the Bill of Rights. They attack anyone who speak out against the intrusion on our rights. Especially anyone who knows the truth about the Second Amendment. They have attacked the “TEA party” movement as terrorists and the Oathkeepers who do not advocate violence or that people stay out of the military or police—only that they remember their oath to the Constitution.

It seems strange that this decision seems to have come full circle. From applying these principles to those who were advocating violations of the Constitution to those who are defending it.

As these Marxist often do, they do not use quotes except those that serve their needs. They do not quote Abraham Lincoln who said, “To sin by silence when they should protest makes cowards of men.” There probably is no text book in school that quotes Thomas Jefferson who said, “No experiment can be more interesting than that we are trying, and which we trust will end in establishing the fact, that man may be governed by reason and truth. Our first objective should therefore be, to leave open to him all the avenues of truth. The most effectual hitherto found, is the freedom of the press. It is, therefore, the first shut up by those who fear the investigation of their actions.”

As the Anti-Federalist *Brutus* observed, “But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to

induce you to be careful, in the first instance, how you deposit the powers of government."

Schenck v. United States 249 U.S. 47 (1919)

Desperately seeking liberal Democrats.

Bourgeois ©2011 by Glen C. Davis



Around the mid-eighties, the popular *Saturday Night Live* had a sketch spoofing *Mutual of Omaha's Wild Kingdom* television show. In the sketch, they were "In Search of the Negro Republican."(1) Jim Fowler, the in the field host for the Wild Kingdom, muddles around the "political animals" asking questions. Finally he finds a "negro" who goes to concerts vice watching football, likes the Carpenters, and will have his broker check out some high-end municipal bonds for Mr. Fowler. He is subsequently drugged and tagged so that they can track his movements.
Earlier in the skit, the host announces, "Tonight, we're on a special mission: due to shifts in the prevailing political climate, minorities are now fleeing the familiar liberal lake wastelands to seek the fertile promised land of the GOP."

We will leave alone the feelings of George Washington on the

spirit of party. You may find that in his farewell address. We will simply deal with the current labels. This article contains enough information to offend everyone. I urge you, however, to continue reading.

Were I to repeat the above *Saturday Night Live* skit I could equally search for "The Liberal Democrat."

I have met liberal Democrats on several occasions. With a healthy fear of pain in my facial area, I would not call them liberal Democrats to their face. They call themselves conservative Republicans. This is because everyone has wrapped themselves up in labels so much that they have not taken the time to sit down and think. This is the danger that George Washington expressed in his farewell address.

To be fair to everyone, I should present a quote from a noted liberal of our time.

> *"It is extremely convenient to have a label for the political and economic viewpoint elaborated in this book. The rightful and proper label is liberalism. Unfortunately, 'As a supreme, if unintended compliment, the enemies of the system of private enterprise have thought it wise to appropriate its label',(2) so that liberalism has, in the United States, come to have a very different meaning than it did in the nineteenth century or does today over much of the Continent of Europe.*
>
> *"As it developed in the late eighteenth and early nineteenth centuries, the intellectual movement that went under the name of liberlism emphasized freedom as the ultimate goal and the individual as the ultimate entity in the society. It supported laissez faire at home as a means of reducing the role of the state in economic affairs and thereby enlarging the role of the individual; it supported free trade abroad as a means of linking the nations of the world together peacefully and democratically. In political matters, it*

> *supported the development of representative government and of parliamentary institutions, reduction in the arbitrary power of the state, and protection fo the civil freedoms of individuals.(3)"*

That liberal was Milton Friedman; Nobel winning economist. His view was the free market system is the best way to protect the freedoms of the citizens of the United States—as enshrined in the Constitution, particularly the inalienable Bill of Rights. The role of government is not to give a hand out or even a hand up. The idea of governments is only to give everyone a fair shake. Building housing, food stamps and other government programs are a detriment to freedom. Liberals believe in limited government. If you can think of Article I, Section 8 of the Constitution as what the government is limited in doing, not what gives them their powers, then you are beginning to think like a liberal.

This is not a new concept. Many of our founding fathers were liberal democrats. Today, that term has been twisted into Constitutional Republican to differentiate them from liberal democrat. This process is called "New Speak." This concept was conceived by George Orwell in his book *1984* written in 1948(4), It is said that Orwell was a "socialist" who even fought in the civil war in Spain. He became disgusted with the concept after news of Stalin's purges leaked to the west. *New Speak* is the changing of words into more "politically correct" versions. One definition that you can find on the web—or, probably, in your printed dictionary—is "favorable to progress or reform, as in political or religious affairs."(5) This is the basic definition used today.

Progressive is another label that has become synonymous with liberal. This brings up another concept from *1984* called "doublethink." This is the ability to hold two diametrically opposing views while believing both to be correct. The "progressive" decries that liberal democrats want to "take us

back to the horse and buggy days," while believing that we must get rid of the internal combustion engine because Al Gore says that there is a phenomenon happening called global warming. George Bush declared, after 911, that citizens should not change their basic way of life while getting a PATRIOT act pushed into law a month later.

Perhaps a discussion on democracy is in order. You may not be familiar with these concepts and progressives, today, will definitely keep their kids from reading this article.

Democracy in its purist form was practiced by ancient Greece. In Greek democracy, certain members of a city had a vote. It was not universal suffrage, as believed, but most of the free members of the society had a vote. These votes were only valid to the city in which the vote was taken. What happened in Athens stayed in Athens. Greece consisted of city-states; a form of confederacy. Much like the United States under the Articles of Confederation.

There is another form of government called "democracy" that has infiltrated the United States in the form of unconstitutional initiatives and referendums. An example of this form of democracy is the fact that 26% of Arizona voters voted to raise the State sales tax 1%. I cannot prove it, of course, but I suspect that a majority of those voters were union members which were to benefit from this raise in the sales tax. Unions are not a part of "Greek democracy," but an institution of the other formed called "democracy," of which we we review presently. As I recall, some number of these voters lost their job anyway some months after the raise had been approved. A more fair form of this democracy would be if 51% of registered voters were required to approved an initiative or referendum.

Elihu Root wrote in his 1913 lecture *Experiments in Government* concerning the Initiative and Compulsory Referendum—as well as Recall of Officers and Popular Review of Judicial Decisions,

“Some of these methods have been made a part of the constitutional system of a considerable number of our states. They have been accompanied invariably by provisions for very short and easy changes of state constitutions, and, so long as they are confined to the particular states which have chosen to adopt them, they may be regarded as experiments which we may watch with interest, whatever may be our opinions as to the outcome, and with the expectation that if they do not work well they also will be abandoned.”

As we saw from the proceeding paragraphs, it has not worked well. The Arizona Constitution has been so muddled up with special interest programs costing the taxpayers more and more each year. The second pair of processes mentioned by Mr. Root are constitutional. They are not “written” in the Constitution, but have existed as part of our culture and tradition which is a part of our Constitution. Initiatives and referendums ignore the sage advise of William Rawle in his *A View of the Constitution of the United States of America*. “A good constitution is better understood and more highly valued, the longer it continues. Frequent changes tend to unsettle public opinion, and in proportion to the facility with which they are made, is the temptation to make them.”

The democracy that our “founding fathers” spoke of was a different kind. This form was written of by many people. The works of John Locke seem to have taken on particular significance. So much so that the preamble to the Declaration of Independence that Thomas Jefferson wrote was taken from the works of John Locke. The form of “democracy” that became part of the culture of the United States was republican in nature. Under the Articles of Confederation, each State was a Republic. The second article of that document read, “Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.” Englishman John Locke dealt with a

parliamentary system of government which is the same basic structure enshrined in the Constitution giving limited and divided powers to the government; i.e., executive, legislative and judicial branches. The only input from the citizens in the original practice of the government under the Constitution was the election of the State legislature. If people disagreed with the laws that they made or the Senators and Representatives they appointed to Congress, they could express their displeasure by simply voting them out of office.

The Republican form of government was so revered that its virtues were touted continuously by both Federalist and Anti-Federalists. The Anti-Federalists feared that the new Constitution would represent the loss of the republican form of government and States' Rights while the Federalists proved their devotion by citing Article IV, Section 4 of the Constitution of the United States.

As for States' Rights, the Federalist *Cassius* wrote, "Can, then, those murmuring sycophants, who oppose the plan of federal government, wish for anything more liberal than what is contained in the aforementioned section? If the powers of a federal head were to be established on as weak a frame as that on which the present confederation is founded, what effect would any constitution have in giving energy to measures designed to promote the glory of the Union, and for establishing its honour and credit? One great object of the federal Convention was, to give more power to future Assemblies of the States. In this they have done liberally, without partiallity to the interests of the states individually; and their intentions were known before the honourable body was dissolved."

So do "liberal democrats" of today practice this kind of democracy? Does so-called socialism protect the free market system by limiting government intervention? Just what form of democracy do they preach?

The liberals believe in allodial title to land. That is, full and clear title that may be given, sold and otherwise transferred as they please.

> *"TO understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man."—John Locke, Two Treatises on Government, Volume II, Chapter II, Of the State of Nature.*

What do "liberals" of today think? *Abolition of property in land and application of all rents of land to public purposes [property taxes]*.

The liberals believe that direct taxes [such as income tax] must be equally proportioned to the population.

> *No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herinbefore directed to be taken.—Article I, Section 9, Clause 4 of the Constitution of the United States of America*

The "liberals" of today changed that with the Sixteenth Amendment. "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." This way they could institute *A heavy and graduated income tax*.

The liberals believe that the government should, "…coin money and regulate the value thereof." The "liberals" of today believe in *Centralisation of credit in the hands of the State, by means of a national bank with State capitol and an exclusive monopoly*.

The “liberals” of today believe in *Centralisation of the means of communication and transport in the hands of the State, Extension of factories and instruments of production owned by the State; the bringing into cultivation of waste-lands, and the improvement of the soil generally in accordance with a common plan*.

I could go on *ad nausem*. Where did the “liberal of today” find all of this in the works of John Locke? Don’t look. You won’t find it there. You will find it in the *Manifesto of the Communist Party*, the English edition of 1888.

You see the liberal democrat believes in the free market system with very little impediment by the federal government. Indeed, even from the State government; though States have the right, under the Constitution, to control the industry and labor within its borders. Congress ONLY has the right to ensure that products are transported from one State are transfered to another without interference. They are supposed to make sure that illegal items are not brought in or exported. Something like—I don’t know—guns sent to Mexico. The free market system is described by Adam Smith in a work he published about the time we began the War of Independence called *An Inquiry into the Nature and Causes of the Wealth of Nations* (PDF here). We have since come to call it Capitalism. This is the form of economic system which Michael Moore uses to make as much money as he can so that he can rail about the system that he uses to increase his gain. Remember *doublethink*?

So how does the Communist feel about the free market system? “It has resolved personal worth into exchange value, and in place of the numberless and feasible chartered freedoms, has set up that single, unconscionable freedom—Free Trade.”

Marx, in this work, goes on to say, “The bourgeoisie has stripped of its halo every occupation hitherto honoured and looked up to with reverent awe. It has converted the

physician, the lawyer, the priest, the poet, the man of science, into its paid wage labourers."

Interesting, isn't it? Today the physician is converted to a "paid wage labourer" by the *Patient's Affordable Health Care act*. The Lawyer is oft times forbidden to bring up the Constitution in the court room. There were several sick attempts by priests to combine Communism with religion (It's all right, in the "liberal" mind of today, if you combine Church and State this way). It continues from the pulpits today giving us unconstitutional hate crimes legislation. As for the poet? "Literature must become party literature. Down with unpartisan litterateurs! Down with the superman of literature! Literature must become a part of the general cause of the proletariat," says Vladimer Lenin. The man of science may only "get paid" from the National Science Foundation for research intent on proving that monkeys made man and global warming will destroy the earth any day now. Honest. Forget those emails.

The, so-called, Interstate Commerce Clause is used to institute much of this government regulation. It was, basically, this commerce clause that was used to declare blacks as *property* in the *Dred Scott v. Sandford*, 60 U.S. 393 (1857) case. "Now, the following are truths which a knowledge of the history of the world, and particularly of that of our own country, compels us to know—that the African negro race never have been acknowledged as belonging to the family of nations; that as amongst them there never has been known or recognised by the inhabitants of other countries anything partaking of the character of nationality, or civil or political polity; that this race has been by all the nations of Europe regarded as subjects of capture or purchase; **as subjects of commerce or traffic**; and that the introduction of that race into every section of this country was not as members of civil or political society, **but as slaves, as property in the strictest sense of the term**." It was, of

course, Southern Democrats who raised this proposition and apparently it has remained in the conscience of the democrat of today. We see, again, the *progressives* rolling back the clock.

Perhaps the difference in our concepts come from these facts. *The Wealth of Nations* is such a large book with hundreds of pages with specific examples. Very difficult to read since the illiteracy level continues to rise in our "Free education for all children in public schools." *The Manifesto of the Communist Party* is short and full of generalized "soundbites" more suitable to *IPhone* aps. You can even make actual soundbites with rap accompaniment. Something like, "You can't get no money from you dad, Bein' slaves to the government ain't so bad. Da got da money!," or whatever.

I think, now, you can detect easily when "liberal democrats" of today are lying. Their lips are moving to form the words, "I'm a liberal." What they really mean is that they are a Communist.

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(1) http://snltranscripts.jt.org/80/80bnegro.phtml
(2) Joseph Schumpeter, History of Economic Analysis (New York: Oxford University Press, 1954) p. 394.
(3) Milton Friedman, Capitalism & Freedom (The University of Chicago Press, 1962) p. 5.
(4) You can listen to the audio version here.
(5) Dictionary.com (http://dictionary.reference.com/browse/liberal)

Arizona State Guard White

Papers

I have published two white papers on an Arizona State Guard at the Constitutional Republic Party web site. They are PDFs requiring Adobe Reader. I am working on more.

Lulu holiday savings until December 14th.

Right now you can save 25% off any book at LULU.com to a maximum of $50. Simply add the coupon code **BUYMYBOOK305** when you checkout. This offer expires December 14, 2011. Some of these books are downloadable as PDFs.
For those who like the smell of paper in the morning, our recent *Treatises on Warfare* contains a collection of documents from various eras of warfare. *Concerning the Militia* is still available and contains a wealth of information on the Second Amendment to the Constitution of the United States.

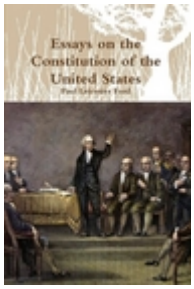
We have recently added *Essays on the Constitution of the United States* by Paul Leicester Ford with additional material and editing by Glen C. Davis. The "government approved" Federalist Papers were not the final word on the subject. See what some of the other Federalists and Anti-Federalists had to say about this document and the Bill of Rights. This book comes in regular print and a large print edition.

The fictional suspense novel *A Shroud of Evidence* is also still available. It is now available at the iBookstore for

your electronic device.

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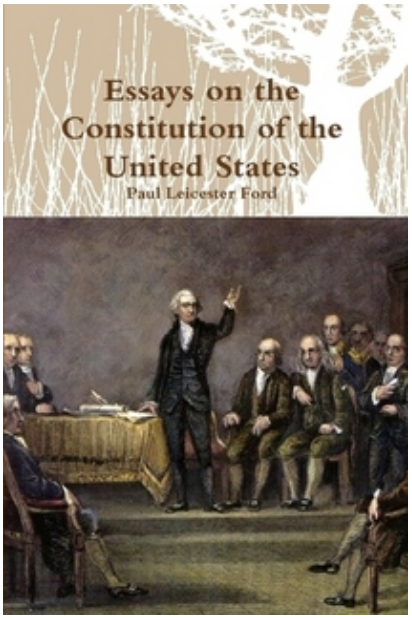
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Disclaimer: Use coupon code AUGUST305 at checkout and receive 15% off Essays on the Constitution of the United States. Maximum savings with this promotion is $100. You can only use the code once per account, and you can’t use this coupon in

combination with other coupon codes. This great offer ends on September 15, 2011 at 11:59 PM so try not to procrastinate! While very unlikely we do reserve the right to change or revoke this offer at anytime, and of course we cannot offer this coupon where it is against the law to do so. Finally, Lulu incurs the cost of this discount, so it does not impact the Author’s proceeds of the book.

Essays on the Constitution of the United States



Now available

After the War for Independence, the country had to form a more perfect union. The question was, what kind.
The States were used to autonomy. Many were so satisfied with this arrangement that the preferred to remain under the Articles of Confederation. There were many opponents to the new Constitution of the United States known as Anti-

Federalists.

The Federalists were those in favor of the new Constitution and its “limited” form of government. They never anticipated their posterity twisting of the words of the Constitution to eliminate the freedoms they had fought for.

But the Anti-Federalists did. “It might be here shewn, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their controul over the militia, tend, not only to a consolidation of the government, but the destruction of liberty,” a writer who wrote as Brutus complained.

Essays on the Constitution was edited by Paul Leicester Ford and published in 1842. It is an intriguing look at the arguments in the newspapers of the time on the subject.

It seems that Rhode Island was not favored among the several States. Mr. Ford added a letter from a writer for Rhode Island.

I edited the work further giving it a new index and adding the works of Brutus which were referred to in the original work, but never added. I added, also, the objections by Elbridge Gerry, Patrick Henry and Colonel George Mason—All of which refused to sign the Constitution.

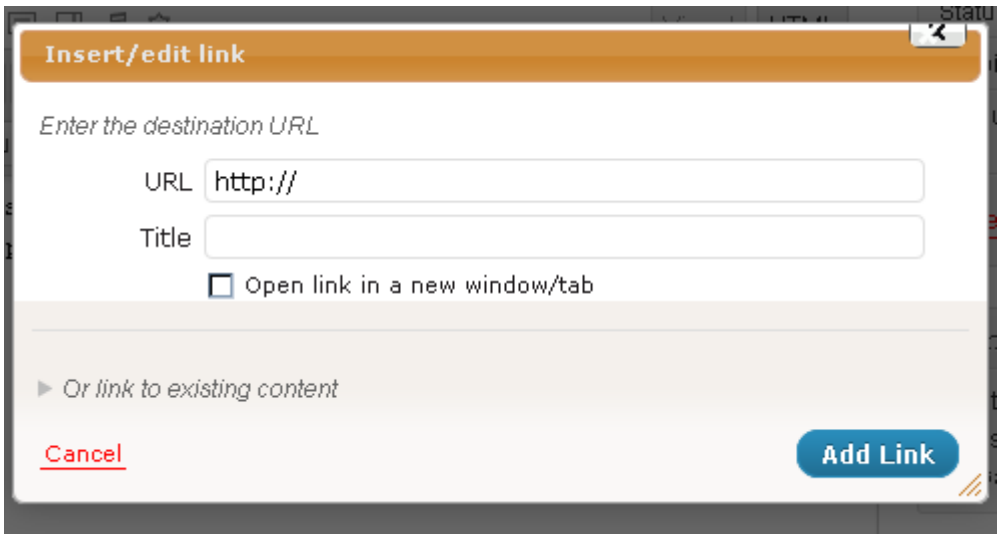
This book is an interesting view of the battle for ratification of the Constitution and a good read for anyone studying the history of the United States from those who lived it.

SEE ALSO: Anti-federalist are “Political Jesuits” under Satanick influence

Where’s the kitchen sink?

Word Press 3.2 is out and they have added some real good features.

One that I like is that you can add the TARGET=”_blank” tag to the link references simply by checking the box marked “Open link in new tab/window.”



I like the new style of the dashboard. It seems a much “cleaner” look.

The only problem that I have found is that I cannot find the “kitchen sink.” The button that opens the toolbar with all of the neat features in Visual mode.

I had to update this site twice to get the new link feature and I wonder if there is a problem with the update feature.

What’s new with me?

I just realized that I have not updated anything since May. I

have been busy.

I finished an article concerning the Tenth Amendment which I may be adding to my articles at *Amazines* soon. I am waiting word to see if a web site wants to use it.

I am working on a reprint of *Essays on the Constitution of the United States* originally edited by Paul Leicester Ford. It contains papers by Federalists and Anti-Federalist debating the passage of the Constitution. I added the works of *Brutus* to the mix.

These are not the *Federalist* papers you are familiar with. These are written by various authors to newspapers around the country. Right now, with the current index, it is about 330 pages, but I expect that to grow. I am trying to keep the work below $15, however. It should be available through LULU by the end of July. You can check the link to my bookstore.

I started this editing project because I needed some source material for another fiction idea I am formulating. I am, also, working on a science fiction short story for fun.

And, I thank God that I am getting actual work. It won't make me rich, but I will be able to eat for one more month.

I hope that everyone out there is finding their blessings growing.

Star Trek Now

Remember how the Enterprise could replicate anything they needed? Get ready for Star Trek today.

Concerning the Militia review.



PLEASE NOTE: Some of the laws cited in this book HAVE CHANGED since it's publication. If you explore, you will see why. I will try to update.

I read Glen Davis' book, Concerning the Militia. This is a subject of which I had already done quite a bit of research on and thought I knew as much as anyone. I had developed some very strong opinions.

While Glen's work supported most of my opinions, it conflicted with others. But I must say, Glen made his case! I found myself enlightened and with the facts he presented I had no choice but to change my view. Bravo, Glen!

I encourage every American to read this book.

—Paul Arnett, Two Dogs Publishing